THE HIGH COURT OF TRIPURA
AGARTALA

RSA 24 of 2006

1.Sri Kanu Chandra Deb
Son of late Jaladhar Deb
Masterpara
P.O. & P.S. Belonia
South Tripura district …. Plaintiff-appellant

-vs.-

1. Smti. Ranibala Choudhury
W/o late Nakuleswari Choudhury

2. Shri Amal Choudhury @ Babu
Son of late Nakuleswar Choudhury

3. Shri Ashis Choudhury
son of late Nakuleshwar Choudhury

4. Shri Muktipada Choudhury
Son of late Nakuleswar Choudhury

-all are of vill. Masterpara
P.O. & P.S. Belonia
South Tripura district …defendant- respondents

BEFORE
THE HON'BLE MR JUSTICE U.B. SAHA

Advocate for the appellant	:	Mr. A. K. Bhowmik Sr. Advocate
Advocate for the respondents	:	Mr. D.C. Roy Advocate
Date of hearing	:	20.1.2015 & 22.01.2015
Date of delivery of the judgment	:	
Whether fit for reporting	:	No

JUDGEMENT AND ORDER

1. This second appeal is directed against the judgment and decree dated 26.4.2006 passed by the learned Additional District Judge, Belonia, South Tripura in Title Appeal No. 6 of 2006 affirming the judgment and decree of dismissal dated 17.1.2006 passed by the learned Civil Judge (Jr. Division), Belonia, South Tripura in Title Suit No. 27 of 2003.

2. Heard Mr. A.K. Bhowmik, learned Sr. Counsel appearing for the appellant as well as Mr. D.C. Roy, learned counsel for the respondents.

3. The present respondents are the legal heirs of the original defendant-respondent, Nakuleshwar Choudhury.

4. The plaintiff appellant, hereinafter referred to as plaintiff, had filed the suit against the defendant Nakuleswar Chowdhury, for declaration of his title over the suit land and also for a decree of perpetual injunction restraining the defendant and his men and agents from entering into the suit land and also not to disturb his peaceful possession and enjoyment of the suit land by him.

5. The facts of the case, in a short compass, are that the plaintiff by two separate deeds of sale purchased the suit land from Amulya Das, Jnanada Sundari and Braja Basi Goldar. Total area of land is measuring 1 kani 7 gandas, equivalent to

0.540 acres of land out of the total 1.396 acres of land. Thus, he had become the owner and possessor of the same. In the year 1987, he filed a case for declaration of his title and for permanent injunction against the defendant and during the trial of that case, the defendant of the instant suit filed a prayer for restraining the plaintiff from entering into the suit land or disturbing the peaceful possession and enjoyment of the said suit land by the defendant. The injunction was granted by the then learned Munsiff and the said order was kept upheld by the appellate authority except some portion of the land. Meanwhile, the revision of Cadestral Survey Operation began and the plaintiff filed a prayer for mutation of his name in place of the vendor Amulya kumar Das and Jnanada Sundari Das. But the said prayer was rejected on the ground that the plaintiff was having no possession over the said land. The plaintiff further pleaded that as he was then injuncted by the order of the learned Munsiff, he could not prove his possession over his purchased lands and consequently, his prayer was rejected. Thereafter, the said suit was mitigated in between the parties and the plaintiff sold out 0.046 acres of land out of 0.58 acres of land. But the defendant got mutation for the whole land i.e. for 0.058 acres of land. The difference is 0.012 acre of land which the plaintiff did not sell out to the defendant.

6. It is stated that on 9.11.2003 at about 10/10.30 a.m. the defendant with an ulterior motive tried to dispossess the plaintiff from 0.012 acre of land for which, the plaintiff-filed the suit for declaration of his right, title and interest over the suit land and also for a decree of perpetual injunction restraining the defendant from entering into the suit land and also from disturbing his peaceful possession over the suit land.

7. Upon receipt of the summons issued by the learned Civil Judge, junior division, Belonia, South Tripura, the defendant appeared and filed his written statement stating, inter alia, that the suit of the plaintiff is vexatious, frivolous and for harassing him and the suit is barred by law of res-judicata and that the plaintiff after disposition of the land having notice of the mutation proceeding appeared in person and no objection was given in respect of the prayer of the defendant made therein and as such, in absence of possession, the plaintiff cannot get a decree of permanent injunction. He accordingly prayed for dismissal of the suit with costs.

8. On the basis of the pleadings of the parties, the learned trial court framed the following issues:

1. ***Is the suit is maintainable in its present form?***
2. ***Has the plaintiff right, title and interest over the suit land?***
3. ***Is the plaintiff entitled to a decree of permanent injunction as prayed for?***
4. **What other relief the plaintiff is entitled under laws and equity?**

9. In support of his case, the plaintiff adduced oral evidence and documentary evidences which were exhibited as:

(1) Sale deed No. I-4475 dated 08.9.69 as Exbt. 1

(2) Sale Deed No. I-4941 dated 10.11.69 as Exhibit-2

(3) Certified copy of the sale deed No. 1/2800 dated 4.11.81 as Exhibit. 3

(4) Certified copy of the sale deed No 1/1655 dated 23.8.91 as Exbt. 4

(5) Certified copy of the order passed by the Assistant Settlement Officer in objection case (U/s 43(1) of the TLR & LR Act)- No. 244 of 1989 as Exbt. 5,

(6) Certified copy of the order passed by the Addl. District Judge, Belonia in Misc. Appeal No. 2 of 1989 of dated 24.4.1991 as Exbt. 6

(7) Notice of the Tahashildar, Belonbia Tahshil Kachari in Mutation Case No. 382 of 1995 along with the order of mutation of then name of the defendant in Revenue Record of Rights (3 sheets) as Exbt. 7

(8) Record of right being the No. 739 prepared in the attestation stage of the First Cadestral Survey Operation, dated 25.4.68 as Exbt. 8

(9) Finally published khatian No. 32, prepared in the name of Amulya kr. Das and Jnanada Sundari Das finally published on 31.7.90 as Exbt. 9

(10) Finally published khatian No. 66 of Mouja Belonia as Exbt. 10

(11) Mutated khatian No. 66 of Mouja-Belonia mutated in the name of the defendant as Exbt. 11.

10. On the other hand, defendant also produced the sale deed being No. 1/1655 dated 23.8.91 as Exbt. A and mutated Khatian No. 66 mutated in the name of the defendant Nakuleswar Chowdhuey as Exbt. B.

11. The learned trial court taking note of both oral and documentary evidence decided the issues against the plaintiff and consequent thereto dismissed the suit.

12. Being aggrieved by and dis-satisfied with the judgment and decree of the learned trial court, the plaintiff preferred the first appeal on the ground that the trial court did not peruse the plaint, written statement and remained silent regarding the validity of the sale deed No. 1/1655 dated 23.8.91, Exbt. 4 as by the said sale seed, the defendant purchased 0.046 acres of land, but he got mutation of land measuring 0.058 acre i.e. excess -.012 acres of land.

13. The case of the defendant is that the plaintiff-appellant was not in possession over the suit property at any point of time and he was injuncted by the Court of law and his entry into the land is not proved by any evidence. It is also stated that without possession, the plaintiff cannot pray for injunction. His further case is that the plaintiff filed a suit being TS 28 of 1987 and the said suit was disposed of and the order of that suit was not produced by him.

14. The case of the plaintiff is that the injunction order passed by the then Munsiff, Belonia in the year 1989 was subsequently vacated by the Addl. District Judge, Belonia, South Tripura and on such a vacation, he entered into the possession of the said land and his possession was disturbed by threat of the defendant in the year 2003.

15. The learned first appellate court while going through the findings of the trial court issue-wise noted that

> "*..the court below in the judgment in para-9 viewed that the plaintiff might have acquired right and title over the suit land, but he lost his title over the suit land while the name of the defendant was present in the remarks column of the khaatian of old cadastral survey operation and also in the last revision. The plaintiff never tried to remove the said remarks from the said khatian and take up the delivery of possession through the process of the court*."

16. It is also stated by the first appellate court that

> "*.. the plaintiff-appellant based his title on the basis of sale deed and he purchased the land from the original owner Amulya Kr. Das, Braja Basi Goldar and Jnanada Sundari Das. These sale deeds are not challenged by the defendant-respondent. Those were exhibited long back in the year 1969. Respondent-defendant, Nakuleswar Choudhury by a registered sale deed purchased 0.050 acres of land from Amulya Kr. Das vide registered deed exbt. 3. Amulya Kr. Das had no title at that time as he had already sold out his property to the plaintiff Kanu Chandra Deb. So, Kanu Chandra Deb acquired title and act of the respondent-defendant cast a shadow on his right. Therefore, he filed a suit for declaration of title and consequential relief as per specific Relief Act.* "

17. Question arose before the first appellate court is as to whether the plaintiff acquired right, title and interest over the suit land as mentioned in the plaint.

18. The learned first appellate court considering the evidence on record and upon perusal of the judgment impugned before him held that

> *"From the perusal of all the documents, it is clear that the plaintiff definitely acquired right, title and interest over the entire suit property 0.058 acres by virtue of sale deed executed in the year 1969 by the original jotdar Jnanada Sundari Das, Amulya Das and Brajabashi Goldar. The original khatian and original ownership of those persons are not denied and confirmed by evidence. So, this issue relating to the right title and interest of the plaintiff is to be decided in favour of the plaintiff-appellant. But the Court below failed to follow the cardinal principle of law and evidence and came to the wrong decision by deciding both the issues against the plaintiff-appellant. So this Court of appeal decided both the issues of maintainability and right, title and interest of the plaintiff over 0.012 acre of land as claimed in favour of the plaintiff-appellant."*

19. The learned first appellate court while deciding the other two issues noted that

> *" ..admittedly the suit No. T.S. 25/87 was filed by the plaintiff-appellant before the court of Munsiff, Belonia. In that suit Ld. Munsiff by order of injunction restrained the plaintiff Kanu Chandra Deb. That suit was filed for declaration of right and recovery of possession. The judgment passed by the then Addl. District Judge disclosed this fact. In the civil misc. appeal No. 2/89, Ld. Addl. District Judge by his order dt. 24.4.90 vacated the injunction order in respect of land measuring one ganda only and over other part of land injunction remained intact, not*

interfered at all, so, plaintiff- appellant Kanu Chandra Deb was restrained and thereafter case was disposed. Whether it was withdrawn or dismissed or compromise is not clear and no evidence is given in this regard."

20. Regarding question of possession over the suit land measuring 0.012 acre, it is noted that as per Khatian No. 66 finally published in the year 1990, it appears that Nakuleswar Choudhury was in possession of 28 + 12 = 40 sahasransa land even not 46 as was purchased by him in the year 1991. Two plots of land under Dag No. 1568 vide 792/5401 and 793/5591, land measuring 18 gandas shown one home and other under permissive possession of Sri Sri Ramthakur Mohanta Maharaj'. The plaintiff-appellant is not shown in possession of the suit land at all.

21. After discussion on the evidence and considering the submission of the learned counsel of the parties, learned first appellate court held that the plaintiff appellant is entitled to get decree of declaration of title but perpetual injunction cannot be granted. The mutation khatian prepared in the name of respondent-defendant is valid for 0.046 acres and not 0.058 acre and as the right, title and interest of the plaintiff-appellant remained intact over the 0.012 acre of land, his right, title and interest were, therefore, declared over that 0.012 acres of land. Ultimately he has set aside the part of the decree passed by the trial court and partly allowed the appeal.

22. Being aggrieved by and dissatisfied with judgment of the first appellate court, the plaintiff appellant preferred the instant second appeal.

23. This second appeal has been admitted on the following substantial questions of law:

> **i)** ***Whether the learned Appellate Court below by way of non-reading and misinterpretation of Exbt. 4 made a perverse finding that plaintiff was not in possession of the suit land?***
>
> ***ii) Whether a presumption of possession can be taken on the basis of a baseless Khatian struck down by the learned Court?***
>
> ***iii) Whether the learned First Appellate Court below illegally relied upon the order of the Assistant Settlement Officer for the purpose of deciding the question of possession although the document was of no consequence after the*** **compromise** ***of the earlier suit and exhibition of the sale deed on 23.8.1991*****?**

24. Mr. Bhowmik, learned senior counsel while urging for setting aside the judgment and decree of the first appellate court in so far as refusal to grant of decree of perpetual injunction in favour of the plaintiff is concerned would contend that both the learned trial court as well as appellate court came to perverse finding so far the possession over 0.012 acre of the land in question. Both the courts below had relied upon the order of the Assistant Settlement Officer for the purpose of deciding the question of possession of the suit land although the said document was of no consequence after compromise of the earlier suit and execution of the sale deed

dated 23.8.91. He further contended that Ext. 4, sale deed, executed by the plaintiff in favour of the defendant by which the plaintiff sold only 0.046 sahasrangsa but not 0.058 sahasrangsa. Thus, 0.012 acre was with the plaintiff in possession.

25. On the other hand, Mr. Roy learned counsel appearing for the defendant submits that both the learned trial court and the appellate court found the defendant in possession and came to a concurrent finding that the perpetual injunction cannot be granted as the plaintiff failed to prove his possession over the suit lands, though the learned appellate court declared title over the suit land. Mr. Roy finally contended that no substantial question of law is involved in the instant case far too purported substantial question of law framed by this court. He again submits that in the present case neither the findings are on the basis of non-existent materials nor on conjecture and surmises. They are based on evidence adduced by the plaintiff himself and the concurrent finding of facts of courts below cannot be interfered with in a second appeal.

26. He further contends that unless there is a possession over the land by the person sought for injunction, injunction cannot be granted. The sine qua non for granting perpetual injunction is the possession. He has also stated that on the same ground the plaintiff filed a suit being Title Suit No. 28 of

1987 and the said suit was disposed of and the order of that suit was not produced.

27. This court has gone through the impugned judgment as well as substantial question of law framed at the time of admission. It appears from the impugned judgment that the learned first appellate court has considered the documents, sale deed, Exbt. 1 and 2, Certified copy of the sale deed 1/2800, Exbt. 3, Certified copy of the sale deed, 1/1655, Exbt. 4, Certified copy of the order of the Assistant Settlement Officer, Exbt. 5, Certified copy of the order passed by the learned Addl. District Judge, Belonia, Exbt. 6, Notice of the Tahashildar, Exbt. 7, Record of right being No. 739 prepared in the attestation stage of the First Cadestral Survey operation dated 25.4.68, Exbt. 8, Finally published khatian No. 32, Exbt. 9, Finally published khatian No. 66, Exbt. 10 and mutated khatian No. 66 of mouja Belonia as Exbt. 11 and also considered the sale deed No. 1/1655 Exbt. A and also marked as Exbt. 4 and mutated khatian No.66 in the name of defendant Nakuleswar Choudhury as Exbt. B. Therefore, it cannot be said that the first appellate court did not consider the Exbt. 4 or misinterpreted the same.

28. By this time it is settled that a point of law which admits of no two laws may be a proposition of law, but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the

land or a binding precedent, and must have a material bearing on the decision of the case if answered either way, in so far as the right of the parties before it are concerned.

29. In the instant case substantial questions of law framed by this court at the time of admission have no material bearing on the decision of the case. Question of possession is a question of fact and that has to be decided on the basis of evidence on record. Here in this case, from the evidence on record, it is admitted that the plaintiff was not in possession at the time of filing of the suit, particularly, from the settlement of record, it appears from the order of the Assistant Settlement Officer passed on 24.2.1990 on the basis of which khatian was prepared and in the khatian, possession is shown in the name of the defendant Nakuleswar over the land measuring 0.012 acre. Another part is shown as house and another 0.06 acre is shown in the name of Ramthakur Seva Mandir as permissive possessor. Admittedly, Ramthakur Seva Mandir was not a party in the suit. Therefore the Trial Court as well as appellate Court rightly came to the conclusion that the plaintiff was not in possession over the suit land and unless the plaintiff proves his possession over the suit land, he is not entitled to perpetual injunction as sought for. Therefore, concurrent findings of facts recorded by both the courts below were neither perverse nor based on no evidence. Therefore, the same do not call for interference by this second appellate

court. Hence, the second appeal being devoid of merit is dismissed.

No order as to costs.

Send down the L.C records.

JUDGE

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